



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9947-63-Region 2]

Notice of Availability of Final NPDES General Permit for Small Municipal Separate Storm Sewer Systems and Federal Facilities within the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency—Region 2 (EPA), is issuing this Notice of a Final National Pollutant Discharge Elimination System (NPDES) general permit, PRR040000/PRR04000F, for discharges from small municipal separate storm sewer systems (small MS4) from urbanized areas within the Commonwealth of Puerto Rico to waters of the United States. This NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of storm water from small MS4s urbanized areas. A prior Notice of Availability of a general permit was issued by EPA in November 2006. EPA has substantially modified and reissuing the general permit pursuant to 40 CFR part 124. The EPA is issuing this permit for five years.

DATES: The general permit will become effective on July 1, 2016. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2006 Small MS4 General Permit on November

5, 2011. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on July 1, 2016. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Section 1.2 of the 2016 Small MS4 General Permit. The 2016 Small MS4 General Permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES Small MS4 General Permit, contact the Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, US EPA Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069; telephone: 787-977-5870; or by e-mail: bosques.sergio@epa.gov.

The general permit is based on an administrative record available at EPA—Region 2, Caribbean Environmental Protection Division, at the above mentioned address. A reasonable fee may be charged for copying requests. However, the general permit and fact sheet are available at EPA’s updated website posting of June 11, 2014: www.epa.gov/region02/water/permits.html.

SUPPLEMENTARY INFORMATION: EPA is reissuing the NPDES general permit for the discharge of stormwater from small MS4s to waters within the Commonwealth of Puerto Rico. The permit describes four distinct small MS4s. These are the Conventional cities and towns;

Non-Conventional State, Federal and other publicly owned systems; Non-Conventional transportation systems; and Non-Conventional State flood control pump station.

The conditions in the general permit are established pursuant to Clean Water Act (CWA) Part 402(p)(3)(iii) to ensure that pollutant discharges from small municipal separate storm sewer systems (small MS4s) are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water quality requirements of the CWA. The term small municipal separate storm sewer system is available in 40 CFR part 122.26(b). In addition, this term also includes systems similar to separate storm sewer systems and flood management conveyances in municipalities such as military bases, large hospital, highways, and flood control pump stations, and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The general permit sets forth the requirements for the small MS4 to “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods” (See Section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes that implementation of best management practices (BMPs) designed to control storm water runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR 122.44(k), the permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of CWA also authorizes EPA to include in an MS4 permit “such other provisions as [EPA] determine[s] appropriate for control of ... pollutants.” This provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166–67 (9th Cir. 1999); 64 FR 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the permit contains the water quality-based effluent limitations, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA.

EPA issued a final general permit to address stormwater discharges from small MS4s on November 6, 2006. The 2006 general permit required small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. The 2016 general permit builds on the requirements of the previous general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a conventional and/or a non-conventional municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the general permit reflect the iterative process of MEP. Accordingly, the general permit contains more specific tasks and details than the 2006 general permit.

EPA has explained in the general permit fact sheet a summary of permit conditions. The general permit and fact sheet are available at EPA's website posting of June 11, 2014:

www.epa.gov/region02/water/permits.html.

Other Legal Requirements

A. Endangered Species Act (ESA)

The provisions related to the ESA have been enhanced from those in the 2006 permit. EPA consulted with the appropriate Federal services (U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)) in connection with the 2014 draft Small MS4 General Permit.

On July 8, 2014, EPA initiated an informal consultation with the USFWS and the National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA, for the reissuance of a proposed 2014 NPDES Small MS4 General Permit. Based on the information, EPA believes that the issuance of the NPDES Small MS4 General Permit (PRR040000), may affect, but is not likely to adversely affect any threatened or endangered species.

On August 22, 2014, the USFWS indicated that the Antillean manatee may be affected. This species is found near shore waters around Puerto Rico where stormwater may be discharged. In addition, USFWS indicated they concur with EPA's determination.

On August 28, 2014, NMFS had questions regarding EPA's proposed 2014 NPDES Small MS4 General Permit. EPA ensured to provide a response to each of NMFS's questions by October 1, 2014. A follow up conference call was held on October 7, 2014 to discuss the responses. On December 18, 2014, EPA held another conference call where the NMFS requested to see examples of EPA inspection reports performed to MS4s and Municipal Stormwater Management Program. EPA provided six (6) documents of coastal municipalities on December 19, 2014. EPA followed up with a letter dated July 24, 2015 seeking NMFS to concur on EPA's determination that stormwater discharges from MS4s and discharge related activities are not likely to adversely affect any federal threatened or endangered listed species or designated habitat.

EPA's decision to issue this general permit is consistent with section 7(d) because it does not foreclose either the formulation by the NMFS, or the implementation by EPA, of any alternatives that might be determined in the consultation to be needed to comply with section 7(a)(2). If the completion of consultation results in new information warranting modifications or conditions to protect listed species or critical habitat, EPA will modify this permit under 40 CFR §122.62(a)(2) to incorporate those non-numerical effluent limits or conditions.

B. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and assigned OMB control number 2040–0004.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their “regulatory actions” (defined to be the same as “rules” subject to the RFA) on Tribal, State, and local governments and the private sector. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA or the UMRA.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: May 18, 2016.

José C. Font, Director,

Caribbean Environmental Protection Division.

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